

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

JIA SHENG,

Plaintiff,

v.

M&T BANK CORPORATION, and  
MANUFACTURERS & TRADERS TRUST  
COMPANY d/b/a M&T BANK,

Defendants.

No. 12 Civ. 01103 (HBS)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S REQUEST  
THAT THE COURT TAKE JUDICIAL NOTICE OF DEFENDANTS' FINANCIAL  
INFORMATION DISCLOSED TO THE PUBLIC AND THE SEC**

Plaintiff Jia Sheng (“Plaintiff” or “Ms. Sheng”) respectfully submits this memorandum of law in support of her request that the Court take judicial notice of the fact that Defendants M&T Bank Corporation and Manufacturers & Traders Trust Company’s (“M&T Bank” or “Defendants”) Form 10-K public disclosure to the SEC reported net income in the amount of \$577,254,000 for the year ending December 31, 2010; \$791,358,000 in the year ending 2011; and \$853,456,000 in the year ending 2012.

**ARGUMENT**

Pursuant to Rule 201(b) of the Federal Rules of Evidence, a judicially noticed fact must be one not subject to reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned. “Judicial notice may be taken at any stage of the proceeding” (FRE 201(f)), and “[a] court shall take judicial notice if requested by a party and supplied with the necessary information” (FRE 201(d) (emphasis added)). Moreover, “in a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.” FRE 201(g).

The contents of Defendants’ annual Form 10-K financial statements are subject to

judicial notice pursuant to FRE 201(b), as these statements “are required by law to be filed with the SEC, and no serious question as to their authenticity can exist.” *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (“[A] District court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC. . . . The practice of taking judicial notice of public documents is not new.”). Moreover, the amount of net income that Defendants reported in their Form 10-K filings with the SEC is directly relevant to Ms. Sheng’s claims for punitive damages in this case because, as the Second Circuit has recognized, “one purpose of punitive damages is deterrence, and [] deterrence is directly related to what people can afford to pay.” *See Patterson v. Balsamico*, 440 F.3d 104, 122 (2d Cir. 2006). Here, the Court should take judicial notice of the fact that Defendants’ Form 10-K disclosures to the SEC reported net income in the amount of \$577,254,000 for the year ending December 31, 2010; \$791,358,000 in the year ending 2011; and \$853,456,000 in the year ending 2012. (*See* accompanying Vallas Decl. in Supp. Mtn. Jud. Notice at Ex. A, page 170).

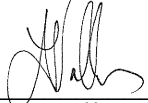
**CONCLUSION**

Ms. Sheng respectfully requests that the Court take judicial notice—and instruct the jury to accept as conclusive—the fact that Defendants’ Form 10-K disclosures to the SEC reported net income in the amount of \$577,254,000 for the year ending December 31, 2010; \$791,358,000 in the year ending 2011; and \$853,456,000 in the year ending 2012.

Dated: New York, New York  
October 3, 2014

Respectfully submitted,

**THE OTTINGER FIRM, P.C.**

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